



PATENT
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:

Miles Stephen CAIN et al.

Application No.: 10/549,877

Filed: December 19, 2005

For: ADHESIVE FABRIC

Confirmation No.: 5886

Group Art Unit: 1794

Examiner: Victor S. Chang

Mail Stop Appeal Brief Patents

Commissioner for Patents
Mail Stop Appeal Brief Patents
Alexandria, VA 22314

APPELLANTS' REPLY BRIEF UNDER 37 C.F.R. § 41.41

Appellants filed a Notice of Appeal on December 2, 2008, and their brief on February 2, 2009. This Reply Brief responds to the arguments raised in the Examiner's Answer mailed April 15, 2009, and is timely filed on or before June 15, 2009.

Appellants have concurrently submitted a Request for Oral Hearing on a separate paper.

This Brief is submitted in the format specified in the current rules, rather than the format specified in the rules originally scheduled to become effective December 10, 2008. As announced in the Federal Register on December 10, 2008, either format is acceptable.

ARGUMENT

Appellants respectfully maintain that the rejections under 35 U.S.C. § 103 are improper and should be reversed for the reasons set forth in the Appellants' Brief filed February 2, 2009. The Examiner's arguments presented in the Examiner's Answer mailed April 15, 2009 are erroneous in two key respects, addressed below.

I. The Examiner's Interpretation of "Impervious" is Erroneous

A. A Layer with Holes is not "Impervious"

The Examiner alleges layer 11 of *Nakamura*, which admittedly has vent holes, is nonetheless "impervious." *See* Answer, p. 6. This cannot be true. The Examiner alleges that "the scope of being an 'impervious' barrier layer has no structural relations to the presence of vent holes or not." This statement is erroneous because one of ordinary skill in the art would not read "impervious" so broadly as to include layers that are not impervious. By doing so, the Examiner disregards this claim limitation.

The Examiner also attempts to define "impervious" in terms of another claim feature by stating that "'impervious' has been defined in claim 1 as 'barrier prevents absorption of the adhesive silicone gel coating into the fabric substrate.'" Answer, p. 6. In other words, the Examiner alleges that the claim term "impervious" is nothing more than a recitation of another claim feature. Again, for this additional reason, the Examiner reads "impervious" out of the claim. It is erroneous to ignore any claim limitation.

B. The Entire Layer Must be Considered

The Examiner also errs by making the nonsensical statement that "[t]he barrier layer is impervious in areas in which it is present." Answer, p. 6. One of ordinary skill in the art would understand an "impervious barrier layer" to be impervious throughout the extent of the layer, not

merely at one or more precise, selected locations. Given the Examiner's interpretation, an open, mesh fabric, such as fishing net, would be considered as impervious to water in the areas where the fabric was present. This interpretation is not sustainable. For the above reasons, the Examiner's interpretation is erroneous.

II. The Examiner's Interpretation of *Nakamura* is Erroneous

A. *Nakamura* does not Disclose the Use of Liquid Silicone Gum

The Examiner alleges that *Nakamura* discloses "a film layer which is a barrier to the liquid silicone gum." See Answer, p. 5. This is erroneous because *Nakamura* indicates that its invention renders the application of liquid silicone gum unnecessary. As discussed in part II.B. *infra*, in *Nakamura*, no liquid silicone gum is applied either directly or indirectly to an article of clothing. Instead, *Nakamura* discloses a method of adhering an adhesive layer to an article of clothing that eliminates the need for applying liquid silicone gum to an article of clothing altogether. The Examiner interprets paragraphs [0062] and [0066] of *Nakamura* as teaching that the invention "has an advantage of having a film layer which is a barrier to the liquid silicone gum." Answer, p. 5. Appellants disagree. A proper interpretation of these paragraphs reveals that *Nakamura* has an advantage of having a film layer which is a substitute for liquid silicone gum.

B. The Adhesive Layer in *Nakamura* is Cured Prior to Installation

As discussed on page 5 of the Appellants' Brief, the adhesive layer of *Nakamura* is cured prior to the installation of the layer sheet. In response, the Examiner alleges that "appellants' argument directed to prior art embodiment not relied upon is misplaced." Answer, p. 7. The Examiner's statement is incorrect because the prior art embodiment relied upon (in Appellants' Brief) is the sole embodiment describing how the layer sheet is manufactured. While it is true.

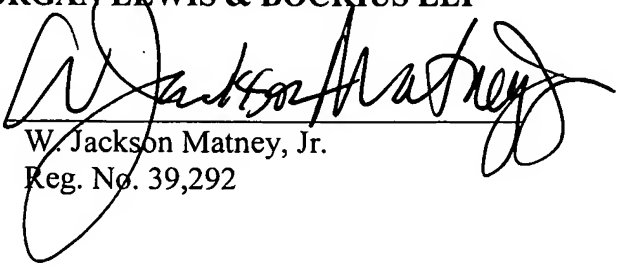
that *Nakamura* discloses multiple embodiments describing how the layer sheet (after being manufactured) may be installed on an article of clothing, there is only one embodiment disclosing the manufacture of layer sheets. *Nakamura* paras. [0048]-[0061]. Therefore, regardless of how the layer sheet is installed to the article of clothing, the method of manufacturing the layer sheet remains the same according to *Nakamura*. That process is described in paragraphs [0045]-[0047] and recites the curing of the polyurethane adhesive. *Nakamura*, para. [0046]. For the above reasons, the Examiner's interpretation of *Nakamura* is not supported by *Nakamura*'s disclosure.

In view of the foregoing, Appellants respectfully request the reversal of the Examiner's rejections and the allowance of the pending claims. If there are any other fees due in connection with the filing of this Reply Brief, please charge the fees to our Deposit Account No. 50-0310.

Respectfully submitted,

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